Lisa T. Simpson (LS-0694) Rishona Fleishman (RF-5263) ORRICK, HERRINGTON & SUTCLIFFE LLP 666 Fifth Avenue New York, NY 10103-0001 Telephone: (212) 506-5000

Attorneys for Defendant Mervyn's LLC

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

Great White Bear, LLC,

Plaintiff,

-against-

Mervyns, LLC,

Defendant.

06 Civ. 13358 (RMB)(FM)

DECLARATION OF LISA T. SIMPSON

LISA T. SIMPSON declares:

- 1. I am a member of the Bar of this Court and of the firm Orrick, Herrington & Sutcliffe LLP, attorneys for defendant Mervyn's LLC ("Mervyn's") in this action. I submit this declaration in support of Mervyn's' motion for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c) and in opposition to the cross-motion to amend the complaint filed by Plaintiff Great White Bear LLC ("GWB").
- 2. Attached hereto as Exhibit A is a true and correct copy of what purports to be a transcription of a voicemail left by Scott Jeffries of Mervyn's for Sandy Fodiman of GWB, marked P 01090, and produced by GWB on February 7, 2007.

3. Attached hereto as Exhibit B for easy cross-reference is a copy of the March 31, 2005 e-mail, produced by GWB and marked P 01091, which is referenced in GWB's proposed Second Amended Complaint and is submitted as Exhibit A to the Declaration of Danny Fodiman in Opposition to Motion for Judgment on the Pleadings and in Support of Cross-Motion to Amend, dated February 27, 2007.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at New York, New York on March 16, 2007.

2

EXHIBIT A

BEGIN VM MESSAGE #3

S. Jeffries:

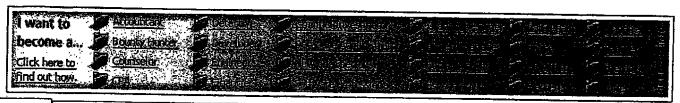
Hey Sanford it's Scott, I got some rough numbers for you. Um, I'm lookin' at about nine million dollars in sales on the collections, over eighteen months that's on two fixtures. And I've got ya' at like, four million two on active. 'Cause I actually have, some fabrics to give you, what my proposal was, what is for ten six for you to take over the Side Out active fixture. I couldn't move the back to school, 'cause we were already in production. So that'll get you to a total sales figure of thirteen million two fifty, ah, and that would equate to roughly twenty million seven in retail purchases. And that's at a thirtyeight margin right, so I'm guessing we probably wanna' be at sixty-seven, sixty-eight mark up so you can back that out to get to cost purchases. Um, this is a little high from the perspective of four way productivity, 'cause that did not back out the table um, but that gets you basically to my ra- ah, average rack productivity for the department, so I- I don't know if you wanna' take it down ten percent, but I- I feel like this- it's pretty aggressive as it sits today. Give me a call if you have any questions ah, I'm in between appointments. I had to come down to the lobby, hopefully you're getting a good signal and you can hear everything. I will talk to you later, bye.

END VM MESSAGE # 3

EXHIBIT B

Welcome, dfodiman [Sign Out, My Account]

Mail Home - Mail Tutorials - Helr



Mail

Addresses

Calendar Notepad

<u> Mail For Mobile - Mail Upgrades - Options</u>

Check Mail

-Compose-



A card in 3 days

inbox (1)

Draft

Sent

for bad credit*	
Folders	[Add - Edit]



Bulk [Empty] Trash [Empty]

My Folders [Hide]

Bubble Gum

Charming

Kohis

Neimans

Nordstrom

Todd

doggin it

marsha

sanjay

sara smith

todd fodiman

Search Shortcuts

My Photos

My Attachments

See your credit score - free

Don't quit job 1 year degree

Mortgage rates low as 4.625%* Previous | Next | Back to Search Results



This message is not flagged. [Flag Message - Mark as Unread]

Printable View

Subject: RE:

Date: Thu, 31 Mar 2005 14:09:39 -0800

From:

Add Mobile Alert

"Danny Fodiman" <dfodiman@yahoo.com> To:

I'll make it up in the last 12 months. Nothing else I can do in this season unless my sales plan is raised to accommodate.

----Original Message----

From: Danny Fodiman [mailto:dfodiman@yahoo.com]

Sent: Thursday, March 31, 2005 1:36 PM

To: Scott.Jeffries

Subject:

Hi Scott Sandy asked me to forward this message to you. He was concerned

after the conversation he had with you the other day. Based upon your original phone message which told Sandy that the collections would be \$9,000,000 at cost and active would be \$4,200,000 at cost (13,200,000) over an 18 month period he wanted to know if we would be able to hit

numbers you had given him. That would translate based on your message to \$20,700,000 in retail sales at a 38% maintained guaranteed margin with the initial IMU at 67%. The reason for this concern is the guarantees which we have already given Rampage. I realize that you had said the number could be agressive and maybe 10% high but our guarantees are substantial. Please bear this in mind. Best Regards, Sandy



Previous | Next | Search Results -

Save Message Text | Full Headers

01091